

RECEIVED

MAR 25 2013

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO.
ST. LOUIS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

v.

STEPHEN E. VIERLING,

Defendant.

No. 4:11-cr-00238-RWS

**RUBINBROWN LLP'S MOTION FOR LEAVE
TO INTERVENE AND TO UNSEAL RECORDS**

COMES NOW RubinBrown LLP ("RubinBrown"), by and through its undersigned counsel, and move the Court for leave to intervene and to unseal the documents filed with the Court in this case. In support of this Motion, RubinBrown states as follows:

1. RubinBrown is the defendant in lawsuits filed by several companies which collectively form the City Lighting Products Group ("City Lighting Products"). *See* Ex. A, First Am. Pet. in *The City Lighting Products Group v. RubinBrown, LLP* (No. 11SL-CC04037, Cir. Ct. St. Louis County, MO). City Lighting Products alleges, among other things, that RubinBrown negligently performed certain accounting reviews for a period of several years through 2007. *Id.*

2. The focus of City Lighting Products' lawsuits is RubinBrown's alleged failure to detect fraud and embezzlement perpetrated by Stephen Vierling, the defendant in this case and City Lighting Products' former Chief Financial Officer. *See id.* ¶¶ 5-6 (alleging that RubinBrown "failed to detect" problems with City Lighting Products' financial statements, including "evidence of employee dishonesty, evidence of employee fraud, and evidence of

employee embezzlement”). Mr. Vierling pleaded guilty to mail fraud, and the Court sentenced him to probation for five years.

3. In defending itself against City Lighting Products’ lawsuits, RubinBrown is conducting discovery into the nature and scope of Mr. Vierling’s fraudulent activities and the extent of any damages that these activities may have caused to City Lighting Products. Of particular note, RubinBrown needs to discover any statements made by Mr. Vierling or City Lighting Products (or their agents) on these issues.

4. The documents filed with the Court in this case contain information that is discoverable by RubinBrown in the lawsuit brought by City Lighting Products. No privilege protects these documents that were filed by the Court. Many of these documents filed with the Court in this case, however, are under seal.

5. By way of example only, the following documents filed under seal with the Court should contain information that is relevant to (or at least discoverable in) RubinBrown’s defense in the City Lighting Products lawsuits:

- The “Guilty Plea Agreement” between the Government and Mr. Vierling (Dkt. #4) – this Agreement should contain details regarding Mr. Vierling’s fraud, as well as information regarding Mr. Vierling’s disclosures to the Government of other criminal/fraudulent activity committed by officers of City Lighting Products (e.g., Timothy Hohl) which would have affected City Lighting Products’ financial statements. All of this fraudulent activity – both by Mr. Vierling and other officers of City Lighting Products – would have affected RubinBrown’s accounting reviews for City Lighting Products.

- The “Sentencing Memorandum” filed by Mr. Vierling (Dkt. #55) and any documents filed by the Government which relate to its sentencing recommendation for Mr. Vierling¹ – these documents likewise should contain information regarding Mr. Vierling’s fraud and his disclosures to the Government related to other criminal/fraudulent activity within City Lighting Products, all of which is relevant to RubinBrown’s defense because all of this fraudulent activity would have affected City Lighting Products’ financial statements that RubinBrown was tasked with reviewing.
- Any sealed document filed by City Lighting Products or Lester Hohl, the former President of City Lighting Products (Dkt. ## 29-30, 46) – these documents may contain information regarding the purported damages caused to City Lighting Products by Mr. Vierling’s fraud and, therefore, will relate to the damages that City Lighting Products seeks from RubinBrown. Such documents likely also contain statements by City Lighting Products or Lester Hohl that could be relevant to RubinBrown’s defense in the City Lighting Products lawsuits.
- RubinBrown also seeks any other sealed documents which relate to the restitution paid by Mr. Vierling, as those documents should collectively catalogue the damages suffered by City Lighting Products; RubinBrown needs access to those documents so that it can test the amount of damages City Lighting Products seeks in its lawsuits against RubinBrown.

6. RubinBrown seeks leave to intervene so that it may ask the Court to unseal the judicial records in this case. *See In re Associated Press*, 162 F.3d 503, 507-08 (7th Cir. 1998)

¹ RubinBrown cannot identify such documents from the docket sheet and its descriptions. However, it is possible that such documents may be found at Dkt. ## 32, 34, 37, and 52.

(recognizing that the “most appropriate procedural mechanism by which [a non-party can seek access to judicial records in a criminal case] is by permitting those who oppose the suppression of the material to intervene for that limited purpose.”) (collecting cases on this point).

7. There is a common law right of access to judicial records. *Webster Groves Sch. Dist. V. Pulitzer Publ’g Co.*, 898 F.2d 1371, 1376 (8th Cir. 1990). Indeed, there is a presumption in favor of such access. *U.S. v. McDougal*, 103 F.3d 651, 657 (8th Cir. 1996). “[O]nly the most compelling reasons can justify non-disclosure of judicial records.” *In re Neal*, 461 F.3d 1048, 1053 (8th Cir. 2006).

8. Here, there is no compelling reason to justify the continued sealing of the documents filed with the Court in this case. Mr. Vierling’s criminal case has ended; he pleaded guilty and was sentenced on October 28, 2011. He is, to the best of RubinBrown’s knowledge, no longer a confidential government informant warranting secrecy. There is nothing to overcome the presumption in favor of access to court records.

WHEREFORE, RubinBrown respectfully requests that the Court grant it leave to intervene and enter an Order unsealing the documents filed with the Court in this case.

Dated: March 25, 2013

Respectfully Submitted,

HUSCH BLACKWELL LLP

 (A handwritten signature of Kyle P. Seelbach, with a circled 'S' next to it.)

By: /s/ Kyle P. Seelbach

Kyle P. Seelbach, #60382MO
kyle.seelbach@huschblackwell.com
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
(314) 480-1500
(314) 480-1505 (fax)

Attorney for RubinBrown LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of March, 2013, the foregoing was filed electronically with the Clerk of the Court for the United States District Court Eastern District of Missouri, Eastern Division, and served by operation of that Court's electronic filing system upon counsel of record.

/s/ Kyle P. Seelbach